ISMAIL v. HAJI TAIB

[F.C. (Suffian, Gill and Ali F.JJ.) April 1, 1972]

[Penang — Federal Court Civil Appeal No. 58 of 1971]

Landlord and Tenant — Padi land — Padi cultivator — Tenancy agreement — Whether to be executed and registered under Padi Cultivators (Control of Rent and Security of Tenure) Ordinance, 1955 — Position of tenant where there is non-compliance with.

Tort — Trespass — Tenant deprived of cultivating land subject to tenancy — Position where tenancy agreement not entered into in accordance with law — Whether landlord has better right — Whether actionable.

Contract — Breach of — Contravention of statute — No relief.

This was an appeal against the decision of the High Court ([1971] 2 M.L.J. 36), which had allowed an appeal from the lower court.

The facts in this case were not in dispute and are sufficiently set out in the judgment.

The appellant/plaintiff brought an action against the respondent/landlord for trespass and damages on the grounds that he was deprived of cultivating padi land and deriving benefit therefrom and had thereby suffered special and general damages.

The learned president of the sessions court gave judgment for the appellant/plaintiff, holding that there was a relationship of landlord and tenant between the parties.

On appeal, the High Court varied the learned president's judgment. The learned appellate judge held that there was no relationship of landlord and tenant between the parties, that the appellant/plaintiff was only a licensee but that the respondent/defendant had not given reasonable notice to the appellant/plaintiff to determine the licence. In the circumstances, the damages were reduced.

The issue for determination in the Federal Court was whether the appellant was a tenant of the respondent.

Held, allowing the appeal: (1) the order of the learned appellate judge would be set aside and the learned president's order restored except that it would be varied by ordering the defendant to pay $724 by way of special damages (not $1,224.00) and nothing by way of general damages;

(2) the relationship between the parties was governed by the ordinary law of contract and was not affected by the padi committee's order which it is true is permissive in nature.

Per curiam: "It seems to us that the object of registration under the Padi Cultivators Ordinance is to protect tenants of padi land from the whims and fancies of their landlords, for under section 3, a padi tenancy agreement (which can only be for one season) must be renewed by the landlord if the tenant requires it for the following season, and under section 10, the tenant cannot be ejected without a written order from the padi committee. The Ordinance does not, in our judgment, render illegal a tenancy agreement not in writing or registered."

Case referred to:-

(1) *Anglia Television Ltd.* v. *Reed* [1971] 3 All E.R. 690, 692.

The following cases were also cited in argument: *Haji Awang* v. *Ibrahim* [1963] M.L.J. 301; *Chai* v. *Liew* [1962] M.L.J. 152, F.C.

FEDERAL COURT.

A. Jayadeva for the appellant.

R. K. Sharma for the respondent.

Suffian F.J. (delivering judgment of the court, and read by **Gill F.J.** in Alor Star): The plaintiff (appellant) was tenant of padi land belonging to the defendant (respondent).

At the beginning of the 1966-7 padi season the plaintiff began preparing the land for planting when the defendant sent his tractor in, turned out the plaintiff and himself planted padi there that season.

The plaintiff sued the defendant in the sessions court for damages for trespass. It is to be observed that he did not ask for possession of the land. He asked for —

(1) $1,224 special damages being loss of profit he would have made had he been allowed to cultivate the land that season, and

(2) general damages.

In the event the learned president gave judgment for him for the sum claimed as well as for $500 general damages. He held that there was a relationship of landlord and tenant between the parties. On appeal the High Court varied the president's judgment. The learned appellate judge held that there was no relationship of landlord and tenant between the parties, that the plaintiff was only a licensee and that the defendant had not given reasonable notice to the plaintiff to determine the licence and that in the circumstances he reduced the damages payable by the defendant to $500.

The tenant has appealed to us.

The question for decision is: was the plaintiff a tenant of the defendant's?

The facts are not in dispute before us.

In 1958 there was a tenancy agreement in the form prescribed by the Padi Cultivators (Control of Rent and Security of Tenure) Ordinance, 1955, executed and registered by the parties. Thereafter there was no such agreement. Nevertheless the plaintiff continued to cultivate part of the land and to pay rent after each harvest to the defendant or to someone else on his behalf. At the beginning of the 1966-7 season after the plaintiff had done some work on the land to prepare for the next planting he was turned out of the land by the defendant and thereafter the defendant himself planted the land. The plaintiff complained to the padi committee, who on 30th July, 1966, made an order requiring the defendant to execute a tenancy agreement with the plaintiff. The defendant failed to do so.

Now the land in question is one to which at the material times the provisions of the Padi Cultivators (Control of Rent and Security of Tenure) Ordinance 1955 applied. Section 4(1) provides that —

"Where a tenancy agreement is made between a landlord and a tenant, a memorandum in writing in such from as may be prescribed .... [it has been prescribed by Federal L.N. 121/12.4.1956] .... shall be signed by the landlord and tenant ...."

Section 5 provides that the memorandum must be deposited with the registrar by the landlord and if that has not been done the tenant may apply for it to be registered and no landlord shall receive any rent from his tenant or apply for an order of possession unless the memorandum has been registered.

Mr. Sharma argues that as after 1958 there was no memorandum in writing of the tenancy agreement

as required by the Ordinance the receipt of rent by the defendant was contrary to law, that therefore the whole arrangement between the parties was illegal and this illegality negatived any relationship of landlord and tenant between the parties.

With respect we do not agree. Tenancy agreement is defined by section 2 simply as meaning "an agreement whereby a landlord agrees to let and a tenant agrees to take any land for the purpose of cultivating padi". It does not say that it must be in writing, so that in our judgment it could be oral. Though section 5 says that there must be a memorandum in writing which must be deposited with the registrar, the Ordinance does not however say that if there is no memorandum in writing or if there is a memorandum in writing but it has not been registered, the tenancy is then illegal. In our judgment, in such an event the relationship between the parties is governed by the Kedah Land Enactment. This means that the relationship between the parties was perfectly legal, being governed solely by the law of contract.

It seems to us that the object of registration under the Padi Cultivators Ordinance is to protect tenants of padi land from the whims and fancies of their landlords, for under section 3 a padi tenancy agreement (which can only be for one season) must be renewed by the landlord if the tenant requires it for the following season and under section 10 the tenant cannot be rejected without a written order from the padi committee. The Ordinance does not in our judgment render illegal a tenancy agreement not in writing or registered.

In the circumstances we would hold that the plaintiff was a tenant of the defendant and a tenant for a year (considering that he paid rent by the year), and that the defendant was wrong in turning him out of the land.

When the plaintiff took his complaint to the padi committee, the committee after hearing evidence made an order not compelling the defendant to execute a tenancy agreement but merely requiring the defendant to execute such an agreement with the plaintiff with respect to part of the land, and much is made by Mr. Sharma of the fact that this order was merely permissive (not mandatory). Under section 7 the plaintiff could have gone back to the committee and asked for an order compelling the defendant to execute a tenancy agreement, for the committee had power to make such an order. The plaintiff did not do so. Mr. Sharma argues that, as the committee's order was merely permissive and as the defendant did not execute a tenancy agreement, the plaintiff had no right to possession of the land and therefore no claim in trespass. At the most, he says, the plaintiff had a claim for possession up to 1965 up to which year rent had been paid, but he had no claim for possession for the season beginning June 1966, considering that rent (which was payable in arrears after each harvest) had not been paid for that season. With respect we do not think that there is anything in this argument, as the relations between the parties are governed simply by the ordinary law of contract and are not affected by the padi committee's order which it is true is permissive in nature.

As regards damages, as has already been stated the plaintiff claimed both special damages and general damages. Under special damages he claimed a sum of $1,224, the proceeds at $85 *per kuncha* of the padi which he estimated he would have harvested less the amount of padi he would have had to give the landlord by way of rent. The trial president allowed this claim though there was no evidence to show that the estimate was reasonable. Even if the estimate was reasonable, the plaintiff should not have been awarded the full sum claimed ($1,224), because there should be deducted from it what he would have had to spend on producing the estimated amount of padi. Here there was no evidence to suggest that the plaintiff had spent any money on the padi field, the evidence being merely that he had prepared the land for planting. The cost of preparing the land was assessed by the learned appeal judge at $500, which was also the figure assessed by the trial president as general damages. We think it reasonable to award the plaintiff by way special damages the sum of $1,224 less $500, the assessed cost of preparing the land. In this connection we would refer to the following passage from the judgment of Lord Denning M.R. in *Anglia Television Ltd.* v. *Reed*[1]:

> "... It seems to me that a plaintiff in such a case as this had an election: he can either claim for his loss of profits; or for his wasted expenditure. But he must elect between them. He cannot claim both. If he has not suffered any loss of profits — or if he cannot prove what his profits would have been — he can claim in the alternative the expenditure which has been thrown away, that is, wasted by reason of the breach. That is shown by *Cullinane* v. *British 'Rema' Manufacturing Co. Ltd.* [1953] 2 All E.R. 1261, 1264, 1265; [1954] 1 Q.B. 292, at 303, 308.

As regards general damages, there was no evidence of any other damage suffered by the plaintiff and we do not therefore think it reasonable to award him anything by way of general damages.

In the result therefore we allow this appeal. Accordingly we set aside the learned appeal judge's order and restore the learned president's order except that it is varied by ordering the defendant to pay $724 by way of special damages (not $1,224) and nothing by way of general damages. The plaintiff shall have the costs of this appeal and of the appeal to the High Court.

Appeal allowed.

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